

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

April 22, 2003

RESPONSIBLE STAFF:

Jennifer Russel, Director Planning
and Code Administration

AGENDA ITEM:

(please check one)

<input type="checkbox"/>	Presentation
<input type="checkbox"/>	Proclamation/Certificate
<input type="checkbox"/>	Appointment
<input type="checkbox"/>	Public Hearing
<input type="checkbox"/>	Historic District
<input type="checkbox"/>	Consent Item
<input type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	Resolution
<input type="checkbox"/>	Policy Discussion
<input type="checkbox"/>	Work Session Discussion Item
<input type="checkbox"/>	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item
is a public hearing)

Introduced	
Advertised	
Hearing Date	
Record Held Open	
Policy Discussion	

TITLE:

Resolution Authorizing the City Manager to Enter into a Second Amendment to Annexation Agreement with Rio Center Associates L.P. et al.

SUPPORTING BACKGROUND:

This amendment to the annexation agreement will facilitate modification to the signage in the Rio portion of the Washingtonian Center. The original agreement capped the square footage of the signage at 3,869.5 square feet and was accompanied by an exhibit with specific signs. Much of this information is out dated. The amendment which is under consideration will establish a more streamlined administrative procedure to approve signs without requiring an amendment to the annexation agreement each time. The square footage cap, as noted above, will remain unchanged.

The Second Amendment agreement is attached for your review. The City Attorney and staff have reviewed the body of the agreement and are in support of going forward with this action. By separate letter agreement, to be signed simultaneously with the amendment to annexation agreement, the property owners will agree to remove the large leasing sign which has been situated adjacent to I-270 for many years. We believe this is a worthwhile accomplishment.

DESIRED OUTCOME:

Adopt resolution.

RESOLUTION No. _____

RESOLUTION OF THE MAYOR AND CITY COUNCIL
OF THE CITY OF GAITHERSBURG
AUTHORIZING THE CITY MANAGER TO ENTER
INTO THE SECOND AMENDMENT TO ANNEXATION AGREEMENT WITH RIO
CENTER ASSOCIATES L.P. ET AL.

ANNEXATION X-159

WHEREAS, the Mayor and City Council of the City of Gaithersburg desire to further amend the above-noted annexation agreement; and

WHEREAS, the Mayor and City Council of Gaithersburg have agreed with RIO Center Associates L.P. et al to further amend the agreement so as to change language related to review and approval of signage so as to provide a more flexible method for making ongoing changes in signs for tenants, while retaining the maximum total signage amount of 3,869.5 square feet established in the Original Agreement as an upper limit of total signage permitted:

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Gaithersburg, that the City Manager be and he hereby is authorized to enter into a Second Amendment to Annexation Agreement on behalf of the City with Rio Center Associates L.P. et al relative to Annexation Petition X-159

ADOPTED by the City Council this day of April 2003.

THIS IS TO CERTIFY that the foregoing Resolution was adopted by the City Council, in public meeting assembled, on the day of April, 2003.

David B. Humpton, City Manager

SECOND AMENDMENT TO ANNEXATION AGREEMENT

THIS SECOND AMENDMENT TO ANNEXATION AGREEMENT ("Second Amendment"), is made this day of , 2003, by and between the CITY OF GAITHERSBURG, MARYLAND, a municipal corporation ("Gaithersburg") and RIO CENTER ASSOCIATES L.P., ET AL. ("RIO"), a Maryland limited partnership.

R E C I T A L S:

A. The parties are certain of those parties who entered into a certain Annexation Agreement, dated July 9, 1991 (the "Original Agreement"), and an Amendment to Annexation Agreement, dated January 10, 1992 (the "First Amendment") (collectively, the "Annexation Agreements"), both setting forth the rights and obligations of the parties thereto as a result of annexing their respective properties into the City of Gaithersburg. This Second Amendment shall amend and modify, to the extent set forth below, the Annexation Agreements, with respect to the signatories hereof only.

B. RIO is the successor-owner of the property previously owned by Washingtonian Center Development No. 1 Limited Partnership ("WCD"), a party to the Annexation Agreements, which WCD Property was annexed pursuant to the Original Agreement (the "Rio Property"). The Rio Property is identical to and contiguous with the WCD Property.

C. The Original Agreement contemplated development by the original owners on their respective properties, of a total of 4,525,000 square feet as set forth in Exhibit "I" of the Schematic Development Plan of the Original Agreement.

D. RIO proposes to modify the development that is permitted by the Annexation Agreements on the RIO Property (the former WCD Property), in a manner which affects only said WCD Property. The proposal by RIO in this Second Amendment to Annexation Agreement will affect only the signage called for in the Annexation Agreement with respect to the Rio Property.

E. The proposal for new signage at the Rio Property will modify the type, location, and process for review and approval of signage that is called for in the Original Agreement by providing a flexible method for making ongoing changes in signs for tenants, while retaining the maximum total signage amount of 3,869.5 square feet originally established in the Original Agreement as an upper limit of the cumulative total of signage. As a result,

signage will be more current, functional and informative to the public, but will not increase in total area.

F. The parties desire to amend the Annexation Agreements with respect to the Rio Property to reflect the changes which are appropriate in light of the new signage and the new signage review process.

NOW, THEREFORE, in consideration of the foregoing and further other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties covenant and agree as follows:

1. The Recitals set forth above are incorporated herein as if fully set forth herein. All capitalized terms not specifically defined herein shall have the same meaning(s) as defined in the Annexation Agreements.

2. The parties agree that this Second Amendment affects only the Rio Property and none of the other properties comprising the other portions of the Subject Properties under the Annexation Agreements. Where a portion of the Original Agreement is referred to herein as being deleted and replaced or superseded with new language set forth herein, said deletion, replacement and supersession is applicable only as to Gaithersburg, RIO and the Rio Property, unless otherwise specifically stated.

3. Paragraph 7(c) of the Original Agreement is deleted in its entirety and replaced with the following:

"(1) Gaithersburg agrees that the existing and planned signage for the Rio Property portion of the existing and proposed development for the Subject Properties as set forth in "Exhibit K (New)" attached hereto and made a part hereof will be grandfathered into Gaithersburg as conforming signage at Montgomery County standards with modifications as may be set forth in the Schematic Development Plan (Exhibit "I") as part of the Original Agreement, and/or in New SDPs approved by the Mayor and City Council in the future.

(2) Future modifications, changes, relocations, refacings or removals, including changes in sizes of individual signs on the Rio Property (collectively, the "New Signs") shall be subject to administrative approval by the City as a part of, and in conjunction with, normal administrative practices and procedures for obtaining permits for such New Signs, and without requiring individual modifications or amendments of the Annexation Agreements or this Second Amendment. Each such New Sign, including subsequent modifications, shall be deemed amendments to "Exhibit 'K' (New)".

Provided however, that the cumulative area of all signs established by this "Exhibit 'K' (New)" shall not exceed the cumulative amount established in the Original Agreement and the original Exhibit "K" attached thereto."

(3) Any signage to be removed or relocated shall be done by RIO at the same time as the erection of any new or relocated signage, so that all signage will not exceed a total amount of 3869.5 square feet. The intention is that old signage that is to be removed will be removed when new signage to be added is installed.

(4) Removal, relocation or erection of signage hereunder will be at the expense of RIO.

4. Exhibit "K" of the Original Agreement is deleted in its entirety and replaced with the drawings and chart attached hereto and made a part hereof as "Exhibit 'K' (New)." Said "Exhibit 'K' (New)" shall be deemed amended in future by the New Signs.

5. The parties to this Second Amendment, shall, in future, substitute new, replacement exhibits (the "Replacement Exhibits") for those exhibits described in the Original Agreement (the "Original Exhibits"), or in this Second Amendment or Amended Exhibits (the "Amended Exhibits") as the contents of said Original Exhibits or Amended Exhibits may be modified, revised or refined in the future through the site plan, schematic development plan amendment, or other land use approval processes, including the New Signs. With respect to RIO and the Rio Property, said Replacement Exhibits shall be considered as substituted in the Original Agreement or this Second Amendment in the future, where appropriate, without requiring any further, formal, textual amendment to the Original Agreement, provided however, that copies of said Replacement Exhibits shall be attached to the Original Agreement and this Second Amendment for informational purposes, and shall be considered incorporated therein and herein as to the Rio Property once so attached.

6. All other provisions of the Annexation Agreements not modified herein, are hereby ratified and shall remain in full force and effect.

[Signatures to follow on next page]

IN WITNESS WHEREOF, RIO and Gaithersburg have executed and sealed this Second Amendment as of the date first written above.

WITNESSES:

CITY OF GAITHERSBURG, MARYLAND,
a municipal corporation

By: _____

David Humpton, City Manager

RIO CENTER ASSOCIATES
LIMITED PARTNERSHIP, a
Maryland limited Partnership
By: Rio at Washingtonian, LLC
A Maryland limited liability company

By: _____

Theodore Pedas, Member/Manager

[SEAL]

THEODORE PEDAS REVOCABLE
TRUST/RIO CENTER, LLC,
A Maryland limited liability company

By: THEODORE PEDAS
REVOCABLE TRUST -
Managing Member

By: _____

Theodore Pedas, Trustee

JAMES PEDAS REVOCABLE
TRUST/RIO CENTER, LLC,
A Maryland limited liability company

By: JAMES PEDAS
REVOCABLE TRUST -
Managing Member

By: _____
James Pedas, Trustee

PETERSON RIO CENTER, LLC,
A Maryland limited liability company

By: _____
Name: _____
Its: _____

* * *

STATE OF *
* to wit:
COUNTY OF *

I HEREBY CERTIFY that on this _____ day of _____, 2003, before me, a Notary Public in and for the State and County aforesaid, personally appeared David Humpton, known to me (or satisfactorily proven) to be the City Manager, of the CITY OF GAITHERSBURG, a municipal corporation, and that such person, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said municipal corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

* * *

STATE OF *
* to wit:
COUNTY OF *

I HEREBY CERTIFY that on this day of , 2003, before me, a Notary Public in and for the State and County aforesaid, personally appeared , known to me (or satisfactorily proven) to be of Rio Center Associates, L.P., a limited partnership, and that such corporate officer, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

* * *

STATE OF

*

*

to wit:

COUNTY OF

*

I HEREBY CERTIFY that on this day of , 2003, before me, a Notary Public in and for the State and County aforesaid, personally appeared Theodore Pedas, known to me (or satisfactorily proven) to be the trustee of The Theodore Pedas Revocable Trust/Rio Center, LLC, a Maryland limited liability company, and that such corporate officer, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

* * *

STATE OF

*

*

to wit:

COUNTY OF

*

I HEREBY CERTIFY that on this day of , 2003, before me, a Notary Public in and for the State and County aforesaid, personally appeared James Pedas, known to me (or satisfactorily proven) to be the trustee of The James Pedas Revocable Trust/Rio Center, LLC, a Maryland limited liability

company, and that such corporate officer, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public
My Commission Expires:

* * *

STATE OF *
 * to wit:
COUNTY OF *

I HEREBY CERTIFY that on this day of , 2003, before me, a Notary Public in and for the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the trustee of The Peterson Rio Center, LLC, a Maryland limited liability company, and that such corporate officer, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public
My Commission Expires:

EXHIBIT "K" (NEW)

[Proposed Signage]

bsa1 #22290 v4

Law Offices

HOLLAND & KNIGHT LLP

3 Bethesda Metro Center
Suite 800
Bethesda, Maryland 20814-6301

301-654-7800
FAX 301-656-3978
www.hklaw.com

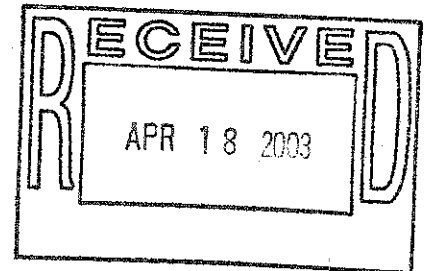
Annapolis	New York
Atlanta	Northern Virginia
Bethesda	Orlando
Boston	Providence
Bradenton	St. Petersburg
Chicago	San Antonio
Fort Lauderdale	San Francisco
Jacksonville	Seattle
Lakeland	Tallahassee
Los Angeles	Tampa
Melbourne	Washington, D.C.
Miami	West Palm Beach
International Offices:	
Caracas*	Sao Paulo
Mexico City	Tel Aviv*
Rio de Janeiro	Tokyo
*Representative Office	

April 17, 2003

WILLIAM KOMINERS
301-215-6610
wkominers@hklaw.com

VIA UPS

Mr. Fred Felton
Assistant City Manager
City of Gaithersburg
City Hall
31 S. Summit Avenue
Gaithersburg, Maryland 20877



Re: Rio Center Center Signage - Second Amendment to Annexation Agreement

Dear Mr. Felton:

In preparation for Mayor and Council action on the Second Amendment to the Annexation Agreement for the Washingtonian Center (the "Amendment"), relating to the signage at the Rio Center, you have requested the following elements and information:

1. Exhibit K (New). This exhibit consists of two parts as follows:

(a) Chart. This chart shows the square footage currently planned for each of the identified signs, their sizes and substance. This chart shows that the total of 3,869.5 square feet is the same as in the original Annexation Agreement and the original signs.

(b) Elevations, Sheets S1 through S4. These four (4) sheets show the four elevations of the Rio Center and identify the locations of each of the signs that are described in the chart. The numbers on the Elevations correspond to the numbers for each sign on the chart.

Mr. Fred Felton

April 17, 2003

Page 2

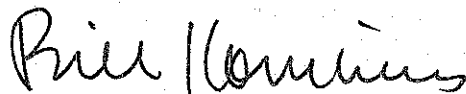
2. Illustrative Photo. This photo illustrates how the signs would actually be displayed on one elevation of the Rio building. This is not intended to be an exhibit to the Amendment, but only as illustration for descriptive purposes.

3. Letter Agreement on Leasing Sign. Draft letter Agreement on removal of the large leasing sign located along Interstate 270.

Thank you for your assistance in this matter. Please contact me if you have any questions on this material.

Very truly yours,

HOLLAND & KNIGHT LLP



William Kominers

Enclosures

cc: Mr. Christopher Mueller
Mr. Jeff Parana
Ms. Jennifer Russel

bsa1 #22564 v1

DRAFT

[Insert onto The Peterson Company letterhead]

April 17, 2003

Mr. Fred Felton
Assistant City Manager
City of Gaithersburg
City Hall
31 S Summit Avenue
Gaithersburg, MD 20877

Re: Washingtonian Leasing Sign

Dear Mr. Felton:

The purpose of this letter is to set forth the agreement between the Peterson Companies ("Peterson"), master developer of the Washingtonian Center, and the City of Gaithersburg ("City") with regard to the Leasing Sign for the Washingtonian Center presently erected along Interstate 270 at the eastern boundary of the Washingtonian Center (the "Leasing Sign").

In response to the request by the City, Peterson agrees to remove the Leasing Sign within __ days following notification by the City that the following events have occurred:

1. An amendment to the Washingtonian Center Annexation Agreement has been approved to authorize: (a) the new proposed signage plan requested for the Rio Center, and (b) the proposed new procedure allowing future changes in the

size, content, location, etc., of such signs at Rio to occur through review by City Staff through permit applications.

2. Signature by the City and representatives of Rio Center on an amendment to the Annexation Agreement to implement the change in the signage program and process as described in Paragraph 1 above.

3. Issuance of permits for the revised Rio signs pursuant to the aforesaid annexation agreement amendment.

I hope that the foregoing adequately describes the proposal and commitment of Peterson to deal with removal of the Leasing Sign as requested by the City. If this arrangement is agreeable, please indicate the concurrence of the City by having an authorized representative of the City sign on the line below and return an original copy of this letter to me. We will then await information that the above events have occurred, so that we can proceed to remove the Leasing Sign. If I have in any way misstated or misunderstood the intended arrangement, please let me know at your earliest opportunity.

Thank you for your assistance in this matter.

Very truly yours,

The Peterson Companies

By: _____

Jeff Parana

DRAFT

AGREED AND ACCEPTED BY:

CITY OF GAITHERSBURG

By: _____

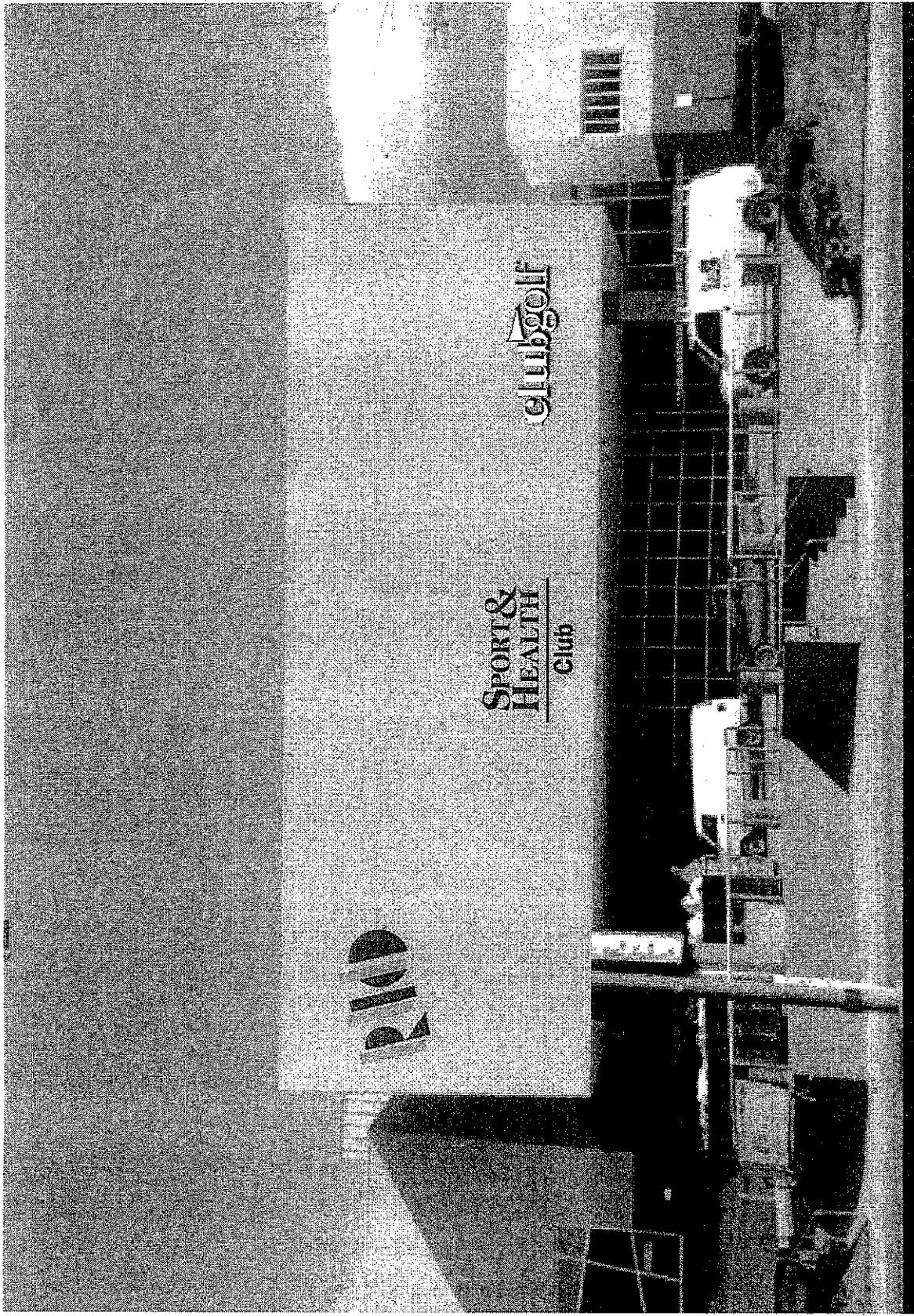
Title: _____

Date: _____

DRAFT

cc: Mr. Chip Burton
Mr. Chris Mueller
William Durkin, Esquire
William Kominers, Esquire

bsa1 #21958 v1



BUILDINGFRONT 85' X 29'

**SERVICE
NEON
SIGNS
INC**

6611 Iron Place
Springfield, VA 22151
(703) 354-3000 Telephone
(703) 354-5810 Fax

CUSTOMER NAME
SPORT & HEALTH CLUB

LOCATION
RIO CENTER
GAITHERSBURG, MD

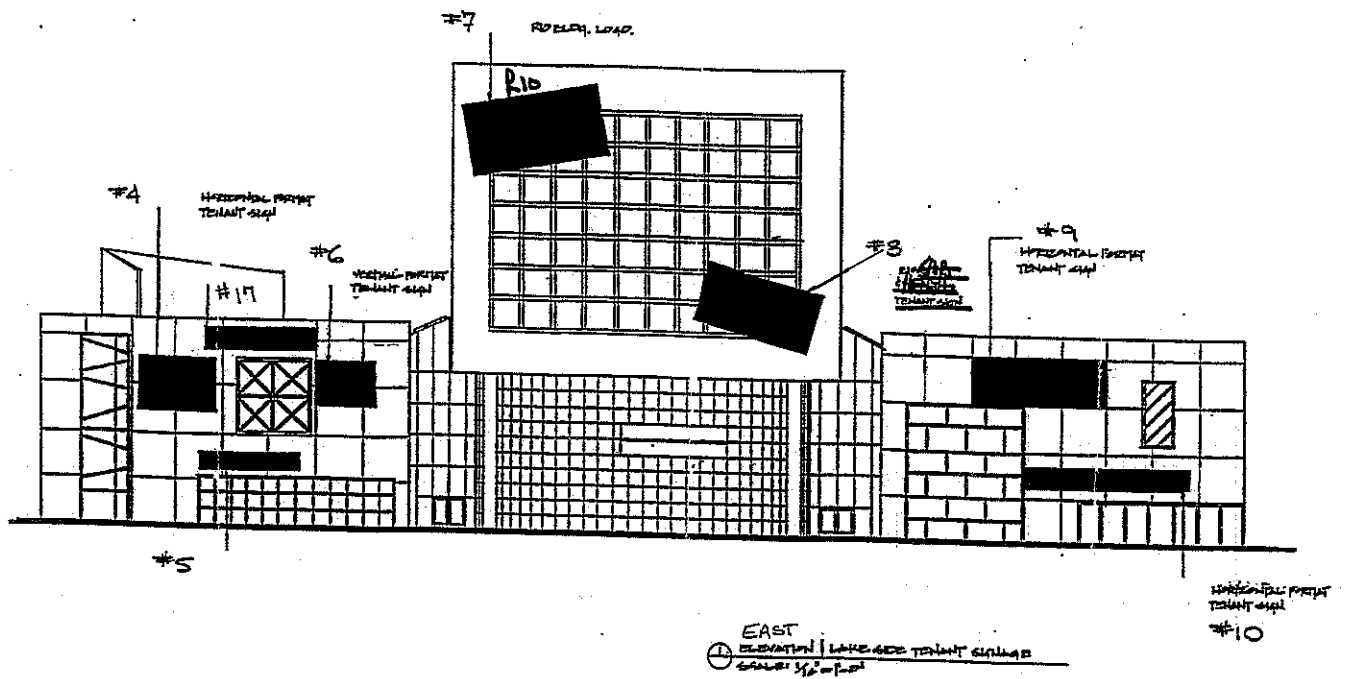
DRAWING#
SALES PERSON
D. COUNSELMAN

DATE
JUNE 10, 2002

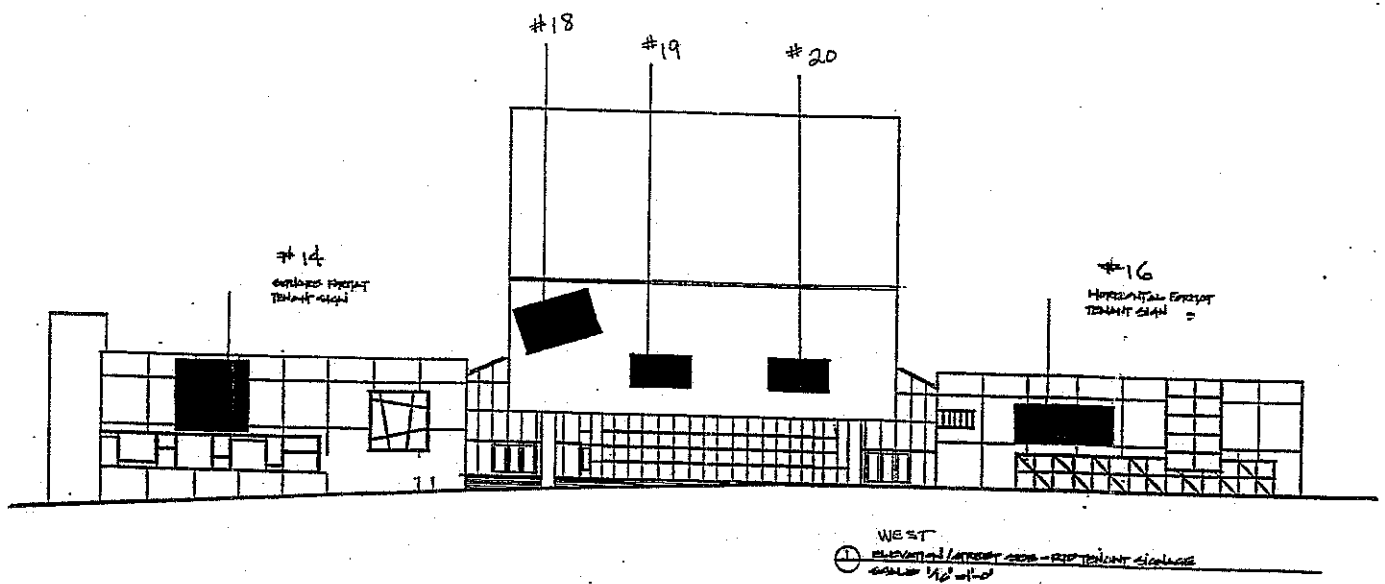
This design is the property of Service Neon Signs, Inc.
Unauthorized use in whole or in part is prohibited. Violators
will be prosecuted to the fullest extent of the law.

CUSTOMER APPROVAL

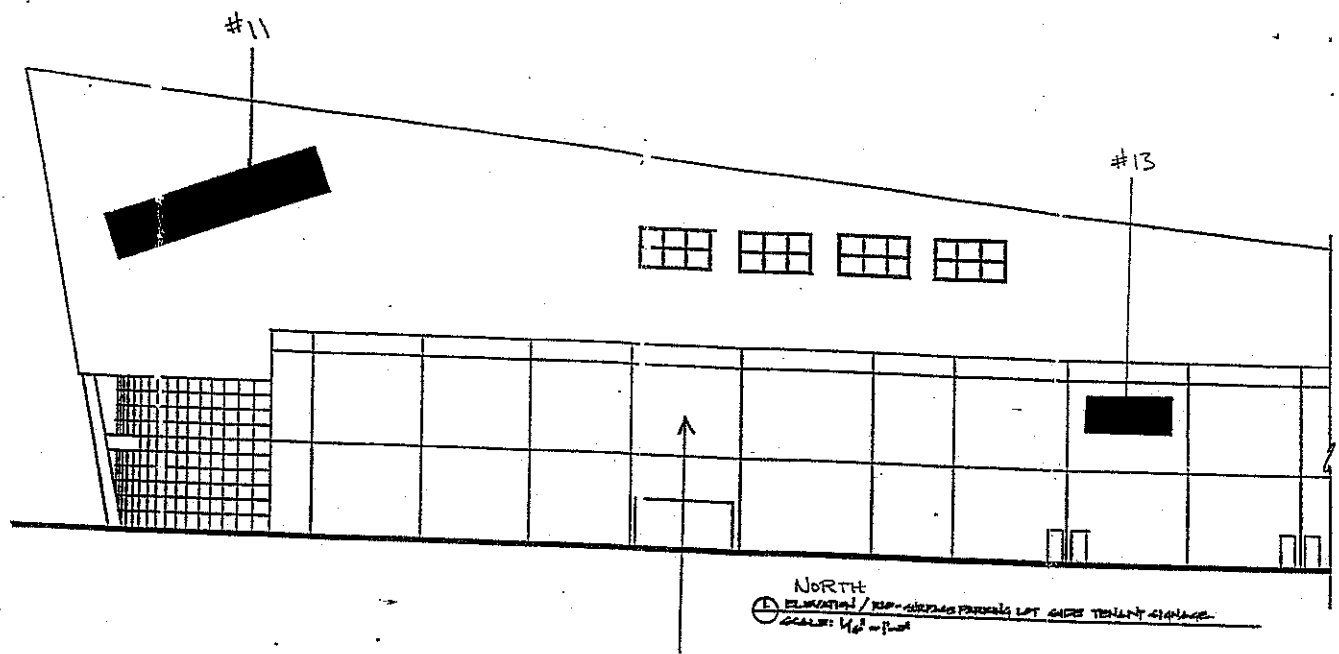
Sign #	Description	Actual Size	Existing/ Planned S.F.	Original Agreement	Change	Elevation
1	Tenant - Guapos	35' x 3'	105	152	-47	East
2	Tenant - Village Green Grill	*	70	152	-82	East
3	Tenant - Rico y Rico	*	146	66	80	East
4	Tenant - Washington Golf	16' x 9'	144	153	-9	East
5	Tenant - Tara Thai	22' x 2' 4"	51	88	-37	East
6	Tenant - Loews (to be eliminated)	n/a	0	130	-130	East
7	RIO Logo	20' x 10'	200	200	0	East
8	Tenant - Sport & Health	28' x 13'	364	364	0	East
9	Tenant - Loews		365	116	249	East
10	Tenant - Hamburger Hamlet	41' x 3'	123	112	11	East
11	RIO Logo	28' 6" x 15'	427.5	550	-122.5	North
12	RIO Entrance Marquee	*	747	396	351.0	North
13	Tenant - Loews (to be eliminated)	n/a	0	314.5	-314.5	North
14	Tenant - Loews	26' 10" x 4' 6"	121	256	-135	West
15	No signage	n/a	0	112	-112	West
16	Tenant - Washington Golf	16' x 9'	144	189	-45	West
M-1	Loews Pylon	10' x 25'	250	119	131	Pad
M-2	Restaurant Pylon		269	400	-131	Pad
17	Tenant - TBD	*	51	0	51	East
18	RIO Logo	*	109	0	109	West
19	Tenant - Sport & Health	*	109	0	109	West
20	Tenant - ClubGolf	18' 1" x 4' 2"	75	0	75	West
		Total	3869.5	3869.5	0	
* Allocated for future use						



S-1
Rio Retail Tenant Signage Layout

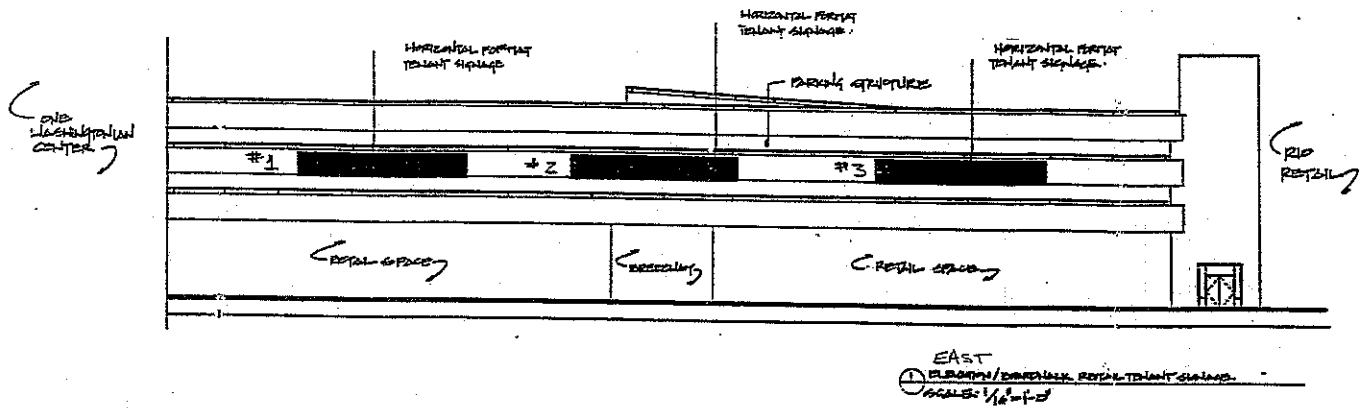


S-2
Rio Retail Tenant Signage Layout



#12 MARQUEE

S-3
 Rio Retail Tenant Signage Layouts



5-4
 Rio Retail Tenant Signage Layout